

Memorandum 2020-67

California Public Records Act Clean-Up (Update of Proposed Legislation)

In November 2019, the Commission approved a final recommendation proposing a nonsubstantive recodification of the California Public Records Act (“CPRA”).¹ Thereafter, Assemblymember Chau (the Commission’s Assemblymember) introduced a bill to implement the recommendation.² The text of the bill incorporated various minor technical revisions of the Commission’s proposal, which were requested by the Office of Legislative Counsel or identified by the staff (e.g., typographical and formatting corrections, revisions to conform to standard legislative drafting practices).³

The Assembly Judiciary Committee set the bill for hearing in May, but the author withdrew it from consideration after a coalition of groups raised pandemic-related concerns. Assemblymember Chau recently agreed to reintroduce the proposed legislation in 2021.

The staff thus reviewed the proposed legislation to prepare it for reintroduction. That was time-consuming, because the proposal is lengthy and it was necessary to check the current status of each provision in the CPRA, as well as each provision listed in the CPRA index (i.e., the CPRA user guide codified at Government Code Sections 6276.01-6276.48).

We did not find much that needs to be changed, because a relatively small number of bills were enacted in 2020. Here is a summary of what we found, with necessary revisions shown in boldface:

1. Minutes (Nov. 2019), p. 4; see also Memorandum 2019-57. For the published version of the recommendation, see *California Public Records Act Clean-Up*, 46 Cal. L. Revision Comm’n Reports 207 (2019). Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission’s website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission’s staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

2. AB 2138 (Chau, 2020).

3. Some of these technical revisions were made before the bill was introduced; others were made by an amendment of the bill.

- Of the bills that proposed to revise provisions in the CPRA itself, only two were enacted in 2020: Assembly Bill 79 (Committee on Budget)⁴ and Senate Bill 1371 (Committee on Judiciary).⁵
- AB 79 amended Government Code Section 6253.2,⁶ which the Commission proposes to recodify as Section 7926.300. **The revisions made by AB 79 can be readily incorporated into the Commission’s proposal by making identical revisions in proposed Section 7926.300.**
- SB 1371 was the annual bill on maintenance of the codes. It made purely stylistic revisions in existing Sections 6253.21, 6254.35, and 6259. Those stylistic revisions were already incorporated into last year’s CPRA recodification bill and the published version of the Commission’s proposal.⁷ There is no need to make any further changes to account for them.
- Some of the provisions listed in the CPRA index were amended in 2020, but none of them were amended in a way that requires any change to the index.
- A number of bills enacted in the 2019-2020 legislative session added new provisions that might warrant inclusion in the CPRA index.⁸ The Commission previously decided, however, not to try

4. 2020 Cal. Stat. ch. 11.

5. 2020 Cal. Stat. ch. 370.

6. See 2020 Cal. Stat. ch. § 3. Unless otherwise indicated, all further statutory references are to the Government Code.

7. See proposed Sections 7923.115(c), 7927.305, 7929.010.

8. See AB 80 (Committee on Budget), 2020 Cal. Stat. ch. 12, §§ 19, 24, 28, 58, 71, 72; AB 82 (Committee on Budget), 2020 Cal. Stat. ch. 14, §§ 10, 17; AB 83 (Committee on Budget), 2020 Cal. Stat. ch. 15, §§ 14, 16, 31-33; AB 332 (Lackey), 2019 Cal. Stat. ch. 172, §§ 2, 3; AB 378 (Limon), 2019 Cal. Stat. ch. 385, §§ 25, 34; AB 685 (Reyes), 2020 Cal. Stat. ch. 84, §§ 4, 8; AB 793 (Ting), 2020 Cal. Stat. ch. 115, §§ 2, 5; AB 857 (Chiu), 2019 Cal. Stat. ch. 442, §§ 9, 14, 15, 18, 19; AB 971 (Salas), 2019 Cal. Stat. ch. 496, §§ 1, 2; AB 1261 (Jones-Sawyer), 2019 Cal. Stat. ch. 580, §§ 8, 10; AB 1864 (Limon), 2020 Cal. Stat. ch. 157, §§ 7, 10; AB 2425 (Mark Stone), 2020 Cal. Stat. ch. 330, §§ 3, 5; SB 75 (Committee on Budget & Fiscal Review), 2019 Cal. Stat. ch. 51, §§ 64, 90; SB 80 (Committee on Budget & Fiscal Review), 2019 Cal. Stat. ch. 27, §§ 96, 138; SB 82 (Committee on Budget & Fiscal Review), 2019 Cal. Stat. ch. 29, §§ 91, 94, 145, 146; SB 87 (Committee on Budget & Fiscal Review), 2019 Cal. Stat. ch. 32, §§ 5, 13; SB 223 (Hill), 2019 Cal. Stat. ch. 699, §§ 2, 3; SB 469 (Dodds), 2019 Cal. Stat. ch. 22, §§ 1, 3; SB 534 (Bradford), 2019 Cal. Stat. ch. 249, §§ 1, 2; SB 557 (Jones), 2020 Cal. Stat. ch. 251, §§ 1, 2; SB 608 (Glazer), 2019 Cal. Stat. ch. 376, §§ 8, 16; SB 670 (McGuire), 2019 Cal. Stat. ch. 412, §§ 1, 2; SB 820 (Committee on Budget & Fiscal Review), 2020 Cal. Stat. ch. 110, §§ 74, 77; SB 852 (Pan), 2020 Cal. Stat. ch. 207, §§ 1, 2; SB 908 (Wieckowski), 2020 Cal. Stat. ch. 163, §§ 1, 4; SB 973 (Jackson), 2020 Cal. Stat. ch. 363, §§ 3, 4; SB 1192 (Bradford), 2020 Cal. Stat. ch. 365, § 2, 5; SB 1237 (Dodds), 2020 Cal. Stat. ch. 88, §§ 8, 12. All of these bills include legislative findings indicating that one or more provisions added by the bill restrict access to public records.

Similar findings appear in the following bills, regarding an amendment of an existing law: AB 79 (Committee on Budget), 2020 Cal. Stat. ch. 11, §§ 3, 101; AB 97 (Committee on Budget), 2019 Cal. Stat. ch. 40, §§ 15, 17; AB 378 (Limon), 2019 Cal. Stat. ch. 385, §§ 29, 34; AB 499 (Mayes), 2020 Cal. Stat. ch. 155, §§ 1, 2; AB 450 (Arambula), 2019 Cal. Stat. ch. 300, §§ 1, 9; AB 857 (Chiu), 2019 Cal. Stat. ch. 442, §§ 8, 18, 19; AB 929 (Luz Rivas), 2019 Cal. Stat. ch. 812, §§ 4, 5; AB 992 (Mullin), 2020 Cal. Stat. ch. 89, §§ 1-4; AB 1813 (Committee on Insurance), 2019 Cal. Stat. ch. 201, §§ 5, 15; AB 2199 (Nazarian), 2020 Cal. Stat. ch. 127, §§ 1, 2; AB 2425 (Mark Stone), 2020 Cal. Stat. ch. 330, §§ 1, 5; SB 85 (Committee on Budget & Fiscal Review), 2019 Cal. Stat. ch. 31, §§ 14, 22; AB

to address the completeness of the CPRA index in this study.⁹ That would have potentially delayed and complicated the proposal, perhaps jeopardizing its enactment. The Commission should stick to that approach in reintroducing its proposal.

- As approved in 2019, the proposed recodification has a one-year delayed operative date, to ease the transition to the new statutory scheme. Due to the pandemic-related delay in seeking enactment of the proposed recodification, **the proposed operative date needs to be updated from January 1, 2022, to January 1, 2023.**
- **The title of the proposed recodification needs to be globally updated. Instead of “the CPRA Recodification Act of 2020,” it should be changed to “the CPRA Recodification Act of 2021.”**

The Commission needs to decide whether the revisions shown in boldface above, and the treatment of the other matters discussed above, are acceptable for purposes of reintroducing its proposed recodification of the CPRA. Unless someone raises a concern, the staff suggests resolving this as a consent item at the upcoming meeting.

Respectfully submitted,

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2944 (Mark Stone), 2020 Cal. Stat. ch. 104, §§ 10, 29. The staff has not assessed whether any of these provisions need to be added to the CPRA index.

9. Minutes (May 2019), pp. 3-4; see also Memorandum 2019-31, pp. 15-16.